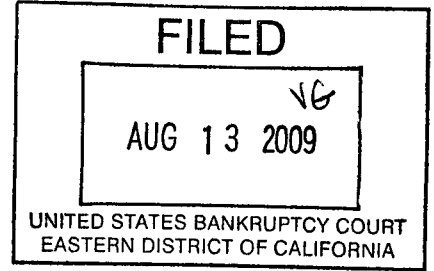


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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re	}	Case No. 09-10461-B-7
Randy Barton and		DC No. JES-1
Billie Barton,		
Debtors.		

**MEMORANDUM DECISION REGARDING TRUSTEE'S  
OBJECTION TO AMENDED EXEMPTIONS**

James Salven appeared in his capacity as the chapter 7 trustee.

Thomas P. Hogan, Esq., appeared on behalf of the debtors, Randy Barton and Billie Barton.

The debtors, Randy and Billie Barton (the "Debtors"), claimed a homestead exemption under Missouri law (the "Exemption") in a residential property located at 9306 Norway, Neosho, Missouri (the "Missouri House"). The chapter 7 trustee, James Salven (the "Trustee"), objects to the Exemption. The Trustee contends that the Debtors actually reside in California based on their testimony at the meeting of creditors and based on the fact that their bankruptcy petition states an address in Chowchilla, California, as their official address of record (the "Objection"). The Debtors contend that their move to California was temporary and that the Missouri House is their permanent residence.<sup>1</sup> For the reasons set forth below, the Trustee's Objection will be overruled.

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<sup>1</sup>At oral argument, Debtors' counsel represented that the Debtors have already returned to Missouri. That representation was uncontroverted by the Trustee.

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1 This memorandum decision contains the court's findings of fact and  
2 conclusions of law required by Federal Rule of Civil Procedure 52(a), made  
3 applicable to this contested matter by Federal Rule of Bankruptcy Procedure 7052.  
4 The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11  
5 U.S.C. § 522<sup>2</sup> and General Orders 182 and 330 of the U.S. District Court for the  
6 Eastern District of California. This is a core proceeding as defined in 28 U.S.C.  
7 § 157(b)(2)(A).

8 **Background and Findings of Fact.**

9 The Debtor, Randy Barton, drives a commercial truck which causes him to  
10 travel between, *inter alia*, the states of Missouri and California. This bankruptcy  
11 commenced with the filing of a voluntary chapter 7 petition in this court on January  
12 22, 2009. At that time, the Debtor was employed by Nieuwkook Enterprises, Inc.,  
13 in Chowchilla, California.<sup>3</sup>

14 With their petition, the Debtors filed the required schedule A, listing their  
15 interest in real property, and the statement of financial affairs ("SOFA"). The  
16 Debtors' schedule A disclosed only one parcel of real property, the Missouri House  
17 described as follows: "Residence Addl: 3bedroom 2bath Location: 9306 Norway,  
18 Neosho, MO 64850." The Missouri House is subject to a mortgage held by Bank of  
19 America in the amount of \$158,111, which is the Debtors' only secured debt. The  
20 Debtors first claimed an exemption for the Missouri House in the amount of \$9,789  
21 using Cal.Civ.Code § 704.730. At the § 341 meeting of creditors, the Trustee  
22 informed the Debtors that they were required to use the Missouri exemption statutes  
23

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24 <sup>2</sup>Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy  
25 Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-  
26 9036, as enacted and promulgated on or *after* October 17, 2005, the effective date of The  
27 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20,  
2005, 119 Stat. 23.

28 <sup>3</sup>Based on Debtors' schedule J.

1 based on the fact that the Debtors had not lived in California for 730 days.<sup>4</sup>  
2 According to the SOFA, the Debtors were residents of Missouri from September  
3 2005 through April 2008.<sup>5</sup> The Debtors' schedules list open bank accounts in both  
4 Chowchilla, California, and in Neosho, MO. Schedule J lists real estate taxes,  
5 presumably on the Missouri House, as a budget item, and also lists expenses of \$100  
6 per month for "Home maintenance (repairs and upkeep)." There are no California  
7 creditors listed, and no executory contracts listed, such as for property rental or  
8 lease.

9 In response to the Trustee's comments at the meeting of creditors, the  
10 Debtors amended their exemption schedule C and changed all of their exemptions to  
11 conform to the Missouri statutes. They claimed the Missouri House exempt under  
12 MO. REV. STAT. § 513.475 in the amount of \$9,789. The Trustee timely objected to  
13 the amended homestead exemption on the grounds that the Debtors were not living  
14 in the Missouri House when they filed their petition.

15 The court conducted a hearing and took the matter under submission, inviting  
16 the Trustee and the Debtors to submit evidence and to brief the relevant issues. The  
17 Debtors filed an opposition to the Objection accompanied by voluminous  
18 documentary evidence (loan documents, mortgage and bank statements, electricity  
19 bills, automobile title records, and business tax returns) showing that the Debtors  
20 maintain numerous active connections with the state of Missouri. The Trustee did  
21 not file any additional evidence or documents.

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22  
23 <sup>4</sup>11 U.S.C. § 522(b)(3)(A).

24 <sup>5</sup>The Debtors' declaration in opposition to the Objection states that their answer in the  
25 SOFA was in error; that they at all times resided in Missouri except for brief periods each winter  
26 when they would come to California for work and to visit family in Chowchilla. Notably, the  
27 Trustee did not move to transfer venue of the bankruptcy case to Missouri, and he has not asked  
28 the court to rule that the Debtors permanently reside in California. The only issue is the Debtors'  
right to claim a homestead under Missouri law. At oral argument, Debtors' counsel was unable  
to respond when the court asked why the case had been filed in California.

1 **The Trustee's Objection.**

2 The Trustee contends that the Debtors are not eligible to claim a homestead  
3 exemption in Missouri. The Trustee relies primarily on the fact that the Debtors  
4 were residing in California and listed the Chowchilla address as their address of  
5 record for this case. The Trustee states that the Debtors, at the § 341 first meeting  
6 of creditors, testified that they resided at the address in Chowchilla on the date of  
7 filing, that they were living there at the time of the creditors' meeting, and that the  
8 Missouri House was then occupied by their adult son. The Trustee's statement is  
9 not evidence and the Trustee did not submit a transcript of the § 341 hearing to the  
10 court. The only evidence supporting the Objection consists of the Debtors'  
11 bankruptcy petition and schedules. The Trustee does not claim that the Debtors  
12 have acted in bad faith.

13 The Debtors responded to the Objection with a declaration of Billie and  
14 Randy Barton which verifies the attached documentary evidence and states that:

15 (1) they moved full time to [the Missouri House] in June 2006 to be near  
16 family;

17 (2) they have lived in the Missouri House except for temporary periods when  
18 they traveled to Chowchilla to be with other family members and escape the  
19 winter weather in Missouri and to find work in California;

20 (3) they have never vacated or abandoned the Missouri House before or after  
21 filing their petition;

22 (4) since July 2006, they have paid the mortgage, utility bills on the Missouri  
23 House; they have filed federal and state tax returns with the Missouri House  
24 address, maintained it as a business address, never rented the property, and  
25 have never moved out their furniture or personal possessions to any other  
26 residence;

27 (5) they did not occupy the Missouri House at the time they filed the petition,  
28 but were visiting in Chowchilla with their son and mistakenly believed that  
the location where they resided at the time of filing was their residence;

(6) they did not understand the question in the SOFA and they understood the  
question as requiring information about where they resided prior to their visit  
to Chowchilla; and

(7) "In hindsight, filing in Missouri may have been more appropriate."

///  
28

1 The statements set forth in Billie and Randy Barton's declaration are  
2 uncontroverted.

3 **Issue Presented.**

4 The issue presented here is straightforward: Are the Debtors eligible to claim  
5 a homestead exemption under Missouri law?

6 **Analysis and Conclusions of Law.**

7 **A. General Exemption Law.**

8 A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027,  
9 1030 (9<sup>th</sup> Cir. 1999). Exemptions are liberally construed to enable the debtors' fresh  
10 start. *In re Gardiner*, 332 B.R. 891, 894 (Bankr. S.D. Cal. 2005). The critical date  
11 for determining a debtor's exemption rights is the petition date. *Goswami v. MTC*  
12 *Distributing (In re Goswami)*, 304 B.R. 386, 393 (9<sup>th</sup> Cir. BAP 2003), citing *In re*  
13 *Michael*, 163 F.3d 526, 529 (9<sup>th</sup> Cir. 1988).

14 **B. Missouri Homestead Law.**

15 The state of Missouri has opted out of the federal exemptions set forth in  
16 § 522(d). The relevant statute in MO. REV. STAT. § 513.475 provides for a  
17 "homestead" exemption in the amount of up to \$15,000. The exemption statutes in  
18 Missouri "are enacted to provide relief to the debtor and are liberally construed in  
19 favor of the debtor." *In re Seeley*, 341 B.R. 277, 280 (Bankr. W.D. Mo. 2006)  
20 (internal citations omitted).

21 For assistance here, the court looks to decisions from bankruptcy courts that  
22 routinely apply Missouri exemption law. The case, *In re Dennison*, 129 B.R. 609  
23 (Bankr. E.D. Mo. 1991), explains some of the law governing homestead exemptions  
24 in Missouri. In that case the trustee objected to the debtor's exemption of property  
25 in which she owned only a future interest. The court found that, although the debtor  
26 did not occupy the property at the time of filing, she did intend to make the property  
27 her residence. Where the debtor failed, however, was that she did not exercise  
28 sufficient control over the timing of her occupancy. She could not occupy the

1 property as her residence until the death or incapacity of the life tenant. The  
2 bankruptcy court explained: "Generally, in Missouri, a 'homestead' entails  
3 ownership plus occupancy. However, occupancy is not an absolute prerequisite to  
4 claiming a Missouri homestead exemption." *Id.* at 610 (citations omitted). The  
5 *Dennison* court quoted the Missouri Supreme Court in *State v. Haney*, 277 S.W.2d  
6 632, 637 (Mo. 1955):

7 To establish a homestead there must be a bona fide intention of  
8 making the premises a homestead or permanent residence of a family.  
9 That intent must be determined from a consideration of all the facts  
and circumstances in the case, and not merely from the declaration of  
the parties.

10 The court, after a review of case law in Missouri and in other states, noted that in  
11 order to claim a homestead exemption pursuant to MO. REV. STAT. § 513.475(1):

12 [A] debtor must 1) occupy the qualified exempted property or 2)  
13 exhibit both an intent to occupy such property, and an ability to  
14 control or strongly influence the time of occupation. An intent to  
15 occupy the premises must be exhibited by both a declaration of such  
16 intent and overt acts in support of such intention. Regarding the  
debtor's control over the time of occupation, the debtor must prove  
that such occupation is either imminent or reasonably close in time  
and is neither indefinite nor incapable of measurement. This may be  
judged on a case-by-case basis.

17 *In re Dennison*, 129 B.R. at 611 (citations omitted).

18 Here, the Trustee acknowledges that the Debtors resided in the Missouri  
19 House for at least two years before traveling to and taking up temporary residence in  
20 California. Further, the Debtors did disclose and declare an exemption for the  
21 Missouri House in their original schedules evidencing their intent with regard to the  
22 Missouri House; they simply used the wrong exemption statutes. The Trustee does  
23 not dispute that, at least at the point in time during which they lived in the Missouri  
24 House, the Debtors had a right to claim a homestead exemption in that property.  
25 The Trustee essentially argues that the Debtors abandoned the Missouri House and  
26 forfeited their right to claim the Missouri exemption by filing their bankruptcy  
27 petition in California. Under Missouri law, a debtor can forfeit the right to claim a  
28 homestead exemption if he or she abandons the house, and physical removal can be

1 evidence of such abandonment. However, the ultimate question of abandonment is  
2 a function of the debtor's intent at the time of removal. *In re Seeley*, 341 B.R. at  
3 277-80.

4 In *Seeley*, the trustee objected to the debtor's claim of homestead exemption  
5 on the grounds that she had abandoned the property when she moved out and listed  
6 the property for sale. The debtor contended that she left the property to obtain better  
7 educational opportunities for her children and intended to return. This intention was  
8 supported by the facts that, she had occasionally done so prior to filing the petition  
9 and she had left personal possessions behind. The debtor intended either to retain a  
10 portion of the property after the sale, or reinvest the proceeds in another homestead  
11 nearby. The court addressed the same question that is at issue here: Whether the  
12 debtor, after establishing a valid homestead, abandoned her homestead and lost the  
13 right to claim it as exempt after vacating the property. The court overruled the  
14 trustee's objection, finding that the debtor had overcome the presumption of  
15 abandonment created when she vacated the property.

16 Physical removal of the debtor from the premises, however,  
17 constitutes *prima facie* evidence of abandonment. In order to preserve  
18 the claim of homestead after physical removal, debtor must  
19 demonstrate an intention to return, which intention was formed at the  
20 time of removal. A vague and indefinite intention to return at some  
future time under certain conditions is not sufficient to prevent the  
removal from the premises from constituting an abandonment. Actual  
removal from the homestead, with no intention to return, amounts to  
forfeiture.

21 *Id.* at 280 (citations omitted).

22 Looking to Missouri court decisions, the bankruptcy court noted that if the  
23 debtor vacates his or her homestead for a specific purpose or time period, consistent  
24 with the intent to return when the purpose was accomplished or the time period  
25 expired, the leaving of that property does not establish an abandonment. *In re Seely*,  
26 341 B.R. at 280. In *Seeley*, the presumption of abandonment was overcome by the  
27 facts that the debtor had retained her connections with the residence consistent with  
28 the claim of homestead and inconsistent with the abandonment of the property; she



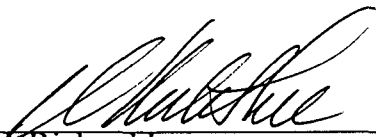
1 continued to make mortgage payments up until filing the petition; and kept some  
2 furniture and other belongings in the house. "Leaving personal property behind is  
3 corroborative of an intent to return and thus tends to rebut any presumption of  
4 abandonment and support the claim of homestead exemption." *Id.* at 281.

5 In this case many of the same facts, which are at odds with the intent to  
6 abandon, are present. The Debtors have maintained financial and business  
7 connections with the state of Missouri. They retained ownership of the Missouri  
8 House and left much of their personal property there. Any presumption of  
9 abandonment of the homestead was rebutted by the Debtors' evidence which  
10 supports their stated intention to return to the Missouri House. Indeed, it appears  
11 that the Debtors had already returned to Missouri at the time this Objection was  
12 argued. While they did not physically occupy the Missouri House at the time they  
13 filed the petition, they had previously occupied, and intended to return to, the  
14 Missouri House and they intended that the Missouri House be their permanent  
15 residence.

16 **Conclusion.**

17 Based on the foregoing, the court is not persuaded that the Debtors intended  
18 to abandon their homestead interest in the Missouri House when they filed their  
19 bankruptcy petition in California. Accordingly, the Trustee's Objection to the  
20 Debtors' exemption of the Missouri House will be overruled.

21 Dated: August 13, 2009

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23   
24 W. Richard Lee  
United States Bankruptcy Judge  
25  
26  
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